

REFERENCE TITLE: environmental standards; county regulation

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# **HB 2809**

Introduced by  
Representatives Burges, Boone

AN ACT

AMENDING SECTION 49-112, ARIZONA REVISED STATUTES; RELATING TO COUNTY ENVIRONMENTAL STANDARDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 49-112, Arizona Revised Statutes, is amended to  
3 read:

4           49-112. County regulation: standards

5       A. When authorized by law, a county may adopt a rule, ordinance or  
6 other regulation that is more stringent than or in addition to a provision of  
7 this title or rule adopted by the director or any board or commission  
8 authorized to adopt rules pursuant to this title if ~~all~~ ANY of the following  
9 conditions are met:

10       1. The rule, ordinance or other regulation is necessary to address a  
11 peculiar local condition.

12       2. There is credible evidence that the rule, ordinance or other  
13 regulation is either:

14           (a) Necessary to prevent a significant threat to public health or the  
15 environment that results from a peculiar local condition ~~and is technically~~  
~~and economically feasible~~.

16           (b) Required under a federal statute or regulation, or authorized  
17 pursuant to an intergovernmental agreement with the federal government to  
18 enforce federal statutes or regulations if the county rule, ordinance or  
19 other regulation is equivalent to federal statutes or regulations.

20       3. Any fee or tax adopted under the rule, ordinance or other  
21 regulation will not exceed the reasonable costs of the county to issue and  
22 administer that permit or plan approval program.

23       B. When authorized by law, a county may adopt rules, ordinances or  
24 other regulations in lieu of a state program that are as stringent as a  
25 provision of this title or rule adopted by the director or any board or  
26 commission authorized to adopt rules pursuant to this title if the county  
27 demonstrates that the cost of obtaining permits or other approvals from the  
28 county will approximately equal or be less than the fee or cost of obtaining  
29 similar permits or approvals under this title or any rule adopted pursuant to  
30 this title. If the state has not adopted a fee or tax for similar permits or  
31 approvals, the county may adopt a fee when authorized by law in the rule,  
32 ordinance or other regulation that does not exceed the reasonable costs of  
33 the county to issue and administer that permit or plan approval program.

34       C. If a county has adopted rules, ordinances or other regulations  
35 pursuant to subsection B of this section and at any time cannot comply with  
36 subsection B of this section, the county shall give notice of noncompliance  
37 to the director. The county shall file that notice with the secretary of  
38 state for publication in the next issue of the Arizona administrative  
39 register at no cost to the county. If the county does not comply with  
40 subsection B of this section within one year after publication of the notice  
41 in the Arizona administrative register, the director shall provide written  
42 notice to and assert regulatory jurisdiction over those persons and entities  
43 subject to the affected county rules, ordinances or other regulations.

1       D. Except as provided in chapter 3, article 3 of this title, before  
2 adopting or enforcing any rule, ordinance or other regulation pursuant to  
3 subsection A or B of this section, the county shall comply with all of the  
4 following:

5       1. File with the secretary of state a written statement including a  
6 summary of the proposed rule, ordinance or other regulation and a  
7 demonstration of the grounds and evidence of compliance with subsection A or  
8 B of this section. The summary shall provide the name of the person with the  
9 county to contact with questions or comments. The secretary of state shall  
10 publish the written statement in the next issue of the Arizona administrative  
11 register at no cost to the county. The county shall publish notice of the  
12 availability of the complete summary and the demonstration in other  
13 newspapers as may be required by this title and shall make the text of any  
14 proposed environmental rule, ordinance or other regulation available to the  
15 public at the same time it files the written summary of the environmental  
16 rule, ordinance or other regulation with the secretary of state as provided  
17 in this paragraph.

18       2. Provide at least thirty days' opportunity for comment by the public  
19 after publication of the summary as prescribed by paragraph 1 of this  
20 subsection. The county shall accept written comments on the proposed rule,  
21 ordinance or regulation and the written demonstration.

22       3. Respond in writing and make available to the public for a reasonable  
23 cost the county's responses to the written comments submitted by  
24 the public pursuant to paragraph 2 of this subsection.

25       4. Provide for a public hearing at the request of the authorized  
26 county officer or if there is sufficient public interest. The county shall  
27 publish the notice of any public hearing at least twenty days prior to the  
28 hearing. The county shall submit the notice of the public hearing to the  
29 secretary of state for publication in the next issue of the Arizona  
30 administrative register at no cost to the county. The county shall publish  
31 notice of any public hearing required pursuant to this paragraph in any  
32 newspaper as prescribed by this title or county ordinance. The county shall  
33 select a time and location for the public hearing that affords a reasonable  
34 opportunity for the public to participate.

35       E. A county is not required to comply with subsection D, paragraphs 2,  
36 3 and 4 of this section before it adopts or enforces a rule, ordinance or  
37 other regulation if the rule, ordinance or other regulation only adopts by  
38 reference an existing state or federal rule ~~or law that provides greater  
39 regulatory flexibility for regulated parties and otherwise satisfies the  
40 requirements prescribed in subsection B of this section.~~

41       F. ~~Until June 30, 1995,~~ A person may file with the clerk of the board  
42 of supervisors for that county a petition challenging a county rule,  
43 ordinance or other regulation ~~adopted before July 15, 1994 for compliance  
44 with the criteria set forth in subsection A or B of this section ON THE  
45 GROUNDS THAT THE RULE, ORDINANCE OR OTHER REGULATION IS DETRIMENTAL TO THE~~

1     **PUBLIC HEALTH.** The petition shall contain the grounds for challenging the  
2 specific county rule, ordinance or other regulation. Within one year after  
3 the petition is filed, the board of supervisors shall review the challenged  
4 rule, ordinance or other regulation and make a written demonstration of  
5 compliance with the criteria set forth in subsection A or B of this section  
6 and challenged in the petition. Any rules, ordinances or other regulations  
7 that have been challenged and for which the board of supervisors has not made  
8 the written demonstration within one year of the filing of the petition  
9 required by this section become unenforceable as of that date. ~~If a county~~  
10 ~~has already made a written demonstration under section 49-479, subsection C,~~  
11 ~~for a rule, ordinance or regulation, the person filing the petition shall~~  
12 ~~state the specific grounds in the petition why that demonstration does not~~  
13 ~~meet the requirements of this section.~~

14     ~~G. A rule, ordinance or other regulation adopted pursuant to~~  
15 ~~subsection A of this section may not be invalidated subsequent to its~~  
16 ~~adoption on the grounds that the economic feasibility analysis is~~  
17 ~~insufficient or inaccurate if a county makes a good faith effort to comply~~  
18 ~~with the economic feasibility requirement of subsection A, paragraph 2,~~  
19 ~~subdivision (a), of this section and has explained in the written statement,~~  
20 ~~made public pursuant to subsection D of this section, the methodology used to~~  
21 ~~satisfy the economic feasibility requirement.~~

22     ~~H. G.~~ This section shall not apply to any rule, ordinance or other  
23 regulation adopted by a county pursuant to:

- 24         1. Title 36 for which the state has similar statutory or rule making  
25 authority in this title.
- 26         2. Section 49-391.
- 27         3. Chapter 3, article 8 of this title.
- 28         4. Chapter 4, article 3 of this title and section 49-765.
- 29         5. Nonsubstantive rules relating to the application process which have  
30 a de minimis economic effect on regulated parties.